

AMENDED IN SENATE AUGUST 26, 2002

AMENDED IN SENATE JUNE 26, 2002

AMENDED IN SENATE JUNE 20, 2002

AMENDED IN ASSEMBLY MAY 14, 2002

AMENDED IN ASSEMBLY APRIL 17, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 3029**

**Introduced by Assembly Member Steinberg**

March 12, 2002

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An act to amend Sections 1280 and 1281.6 of, and to add Sections ~~1281.89 and 1281.93~~ *1281.81, 1281.82, and 1281.83* to, the Code of Civil Procedure, relating to arbitration.

LEGISLATIVE COUNSEL'S DIGEST

AB 3029, as amended, Steinberg. Consumer arbitration agreements: private arbitration companies.

Existing law provides for the enforcement of arbitration agreements and requires a court to vacate an arbitration award in specified circumstances.

This bill would define attorney for a party, consumer arbitration, consumer party, neutral arbitrator, and private arbitration company for these purposes. The bill would specify that if a consumer arbitration agreement, entered into or renewed on or after January 1, 2003, designates one or more ~~specific arbitrators or exclusive~~ private arbitration companies *or SROs* or incorporates the arbitration rules of

a private arbitration company *or SRO*, the consumer party shall have the option, as specified, after a dispute arises, to choose a different ~~arbitrator or neutral private arbitration company, and or SRO. The bill would specify that if the agreement is entered into or renewed on or after April 1, 2003, the arbitration agreement shall plainly notify the consumer of this right, as specified, as well as the right to obtain information about private arbitration companies, as specified. The bill would prohibit an arbitrator or private arbitration company from administering or otherwise participating in a consumer arbitration; unless the agreement complies with these requirements and the consumer chooses the arbitrator or private arbitration company after the dispute arises. The bill would also prohibit a private arbitration company from administering a consumer arbitration if, on or after January 1, 2003, it provides specified services or products to a party or attorney for a party to arbitration. The bill would specify the remedies for these violations in violation of these requirements.~~

*This bill would require a private arbitration company to disclose specified information relating to possible conflicts of interest within 15 days of the receipt of a demand for arbitration pursuant to a consumer arbitration agreement. This bill would also require proposed private arbitration companies to be disqualified for failing to comply with this disclosure provision under specified circumstances. The bill would also authorize a party to disqualify a private arbitration company on the basis of the disclosure statement, except as specified.*

~~The bill would also prohibit certain solicitations, as specified, regarding consumer arbitration cases, and prohibit a private arbitration company from making certain representations regarding consumer arbitration, adopting or enforcing specified rules governing consumer arbitration, or giving or receiving remuneration for referrals, as specified. The bill would specify that it applies to all consumer arbitration proceedings subject to the provisions of the bill or conducted in California. The bill would also specify that the application of certain provisions of the bill to health care service plans shall become operative on January 1, 2004.~~

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.



*The people of the State of California do enact as follows:*

SECTION 1. *The Legislature finds and declares that it is the public policy of the state that private arbitration companies conduct themselves in accordance with appropriate ethical standards in order to protect participants in consumer arbitrations and to promote public confidence in the arbitration process.*

SEC. 2. Section 1280 of the Code of Civil Procedure is amended to read:

1280. As used in this title:

(a) “Agreement” includes but is not limited to agreements providing for valuations, appraisals and similar proceedings and agreements between employers and employees or between their respective representatives.

(b) “Attorney for a party” includes any attorney actually representing a party ~~and any attorney currently associated in the practice of law with an attorney hired to represent a party. and any attorney present at the arbitration hearing or who is identified in any arbitration brief or other paper submitted to the arbitrator as representing a party for purposes of the arbitration.~~

(c) “Award” includes but is not limited to an award made pursuant to an agreement not in writing.

(d) “Consumer arbitration” means an arbitration that is binding on the consumer and conducted under a predispute arbitration provision contained in a contract that meets both of the following criteria:

(1) The contract is with a “consumer party.”

(2) The arbitration provision is contained in a printed form agreement or was drafted by or on behalf of, or inserted by or on behalf of, the nonconsumer party.

(e) “Consumer party” means a party to an arbitration agreement who, for the purpose of that agreement, is any of the following:

(1) An individual who seeks or acquires, including by purchase, lease, or license, any goods or services primarily for personal, family, or household purposes, including financial services, insurance, and other goods and services, as defined in Section 1761 of the Civil Code.

(2) An individual who is an enrollee, a subscriber, or an insured under a health care service plan, within the meaning of Section

1 1345 of the Health and Safety Code, or a health care insurance  
2 plan, within the meaning of Section 106 of the Insurance Code.

3 (3) An individual with a medical malpractice claim that is  
4 subject to arbitration pursuant to a predispute arbitration  
5 agreement.

6 (4) An employee or applicant for employment in a dispute  
7 arising out of, or relating to, his or her employment or prospective  
8 employment, except a dispute under or arising out of a collective  
9 bargaining agreement between an employer and its employees or  
10 between their respective representatives.

11 (f) “Controversy” means any question arising between parties  
12 to an agreement whether the question is one of law, of fact, or both.

13 (g) “Neutral arbitrator” means an arbitrator who is selected or  
14 appointed by one of the following methods:

15 (1) Jointly by the parties or by the arbitrators selected by the  
16 parties.

17 (2) By the court when the parties or the arbitrators selected by  
18 the parties fail to select an arbitrator who was to be selected jointly  
19 by them.

20 (3) By a private arbitration company, under an agreement of the  
21 parties or applicable rules.

22 (h) “Party to the arbitration” means a party to the arbitration  
23 agreement:

24 (1) Who seeks to arbitrate a controversy pursuant to the  
25 agreement;

26 (2) Against whom the arbitration is sought pursuant to the  
27 agreement; or

28 (3) Who is made a party to the arbitration by order of the neutral  
29 arbitrator upon the party’s application, upon the application of any  
30 other party to the arbitration or upon the neutral arbitrator’s own  
31 determination.

32 (i) “Private arbitration company” means any  
33 nongovernmental entity or individual that holds itself out as  
34 managing, coordinating, or administering arbitrations, or  
35 providing the services of neutral arbitrators, or making referrals or  
36 appointments to, or providing lists of, neutral arbitrators. “Private  
37 arbitration company” includes any entity owned, in whole or in  
38 part, by any individual or affiliated with, a private arbitration  
39 company, but does not include individuals appointed to serve as  
40 the arbitrator; entities that administer, make referrals or



1 appointments to, or provide lists of arbitrators in, fewer than five  
2 consumer arbitration cases per year; or any self-regulatory  
3 organization (SRO) as defined in the Securities and Exchange Act  
4 of 1934 (15 U.S.C. 78c(a)(26)) or the federal Commodity  
5 Exchange Act (7 U.S.C. 1 et seq.) and regulations adopted in  
6 implementation of that act.

7 (j) “Written agreement” shall be deemed to include a written  
8 agreement which has been extended or renewed by an oral or  
9 implied agreement.

10 ~~SEC. 2.~~

11 *SEC. 3.* Section 1281.6 of the Code of Civil Procedure is  
12 amended to read:

13 1281.6. (a) Except as provided in subdivision (b), if the  
14 arbitration agreement provides a method of appointing an  
15 arbitrator, that method shall be followed.

16 ~~(b) If a consumer arbitration agreement entered into or~~  
17 ~~renewed on or after January 1, 2003, designates one or more~~  
18 ~~exclusive arbitrators, private arbitration companies, or SROs, or~~  
19 ~~incorporates the arbitration rules of a private arbitration company~~  
20 ~~or SRO, the consumer party shall have the option, after a dispute~~  
21 ~~arises, to choose a different arbitrator, private arbitration company,~~  
22 ~~or SRO, as the case may be, and the arbitration agreement shall~~  
23 ~~plainly notify the consumer of this right, as well as of the right to~~  
24 ~~obtain information about private arbitration companies as~~  
25 ~~provided by Section 1281.96 in the arbitration clause. This notice~~  
26 ~~shall also be provided to the consumer party by the private~~  
27 ~~arbitration company in the first communication from the private~~  
28 ~~arbitration company to the consumer party regarding the~~  
29 ~~arbitration, and in the rules of procedure governing the arbitration.~~  
30 ~~The option to choose a different arbitrator or private arbitration~~  
31 ~~company may be exercised by the consumer party within 75 days~~  
32 ~~from the date the consumer party serves a demand for arbitration,~~  
33 ~~the noneconsumer party serves a demand for arbitration specifying~~  
34 ~~an arbitrator, private arbitration company, or SRO, or a court~~  
35 ~~issues an order compelling arbitration. No consumer arbitration~~  
36 ~~may be self-administered by a party. No arbitrator or private~~  
37 ~~arbitration company may administer or otherwise participate in a~~  
38 ~~consumer arbitration unless the arbitration agreement complies~~  
39 ~~with this subdivision and the consumer chooses the arbitrator,~~  
40 ~~private arbitration company, or SRO after the dispute arises, or~~

~~1 fails to timely exercise the option to choose another arbitrator,  
2 private arbitration company, or SRO. Any arbitration award  
3 rendered in violation of this section shall be vacated at the request  
4 of the consumer party pursuant to Section 1286.2. This  
5 subdivision shall apply to all consumer arbitration agreements  
6 subject to this article, and to all consumer arbitration proceedings  
7 conducted in California.~~

*(b) (1) If a consumer arbitration agreement entered into or renewed on or after January 1, 2003, designates one or more exclusive private arbitration companies or SROs, or incorporates the arbitration rules of a private arbitration company or SRO, the consumer party shall have the option, after a dispute arises, to choose a different neutral private arbitration company or SRO, as the case may be.*

*(2) If a consumer arbitration agreement entered into or renewed on or after April 1, 2003, designates one or more exclusive private arbitration companies or SROs, or incorporates the arbitration rules of a private arbitration company or SRO, the arbitration agreement, in its arbitration clause, shall plainly notify the consumer of the right to choose a different private arbitration company or SRO, as the case may be, as well as of the right to obtain information about private arbitration companies as provided by Section 1281.96. This notice shall also be provided to the consumer party by the private arbitration company in the first communication from the private arbitration company to the consumer party regarding the arbitration, and in the rules of procedure governing the arbitration.*

*(3) The option to choose a different neutral private arbitration company may be exercised by the consumer party, within 45 days from either the date the consumer party serves a demand for arbitration, the date the nonconsumer party serves a demand for arbitration specifying a private arbitration company or SRO, or the date a court issues an order compelling arbitration. No administration of the consumer arbitration shall be conducted prior to the exercise of the consumer's right to choose a different private arbitration company or SRO or the expiration of the period in which the consumer may exercise the right to choose a different private arbitration company or SRO, whichever comes first. If the consumer exercises the option to choose a different private arbitration company or SRO, the parties may agree on an*

1 *alternative private arbitration company or SRO or petition the*  
2 *court for appointment of an arbitrator pursuant to this section.*

3 *(4) No consumer arbitration may be self-administered by a*  
4 *party or the parent, subsidiary, or other legal affiliate of a party.*

5 *(5) No arbitrator or private arbitration company may*  
6 *administer or otherwise participate in a consumer arbitration in*  
7 *violation of this section. Any arbitration award rendered in*  
8 *violation of this section may be vacated at the request of the*  
9 *consumer party pursuant to Section 1286.2.*

10 *(6) This subdivision shall apply to all consumer arbitration*  
11 *agreements subject to this article, and to all consumer arbitration*  
12 *proceedings conducted in California.*

13 (c) If the arbitration agreement does not provide a method for  
14 appointing an arbitrator, the parties to the agreement who seek  
15 arbitration and against whom arbitration is sought may agree on  
16 a method of appointing an arbitrator and that method shall be  
17 followed.

18 (d) In the absence of an agreed method, or if the agreed method  
19 fails or for any reason cannot be followed, or if an arbitrator  
20 appointed fails to act and his or her successor has not been  
21 appointed, the court, on petition of a party to the arbitration  
22 agreement, shall appoint the arbitrator.

23 (e) If a petition is made to the court to appoint a neutral  
24 arbitrator, the court shall nominate five persons from lists of  
25 persons supplied jointly by the parties to the arbitration or obtained  
26 from a governmental agency concerned with arbitration or a  
27 private disinterested association concerned with arbitration. The  
28 parties to the agreement who seek arbitration and against whom  
29 arbitration is sought may within five days of receipt of notice of  
30 the nominees from the court jointly select the arbitrator whether  
31 or not the arbitrator is among the nominees. If the parties fail to  
32 select an arbitrator within the five-day period, the court shall  
33 appoint the arbitrator from the nominees.

34 ~~SEC. 3. Section 1281.89 is added to the Code of Civil~~  
35 ~~Procedure, to read:~~

36 ~~1281.89. (a) A solicitation regarding an existing or future~~  
37 ~~consumer arbitration case may not be made by or on behalf of a~~  
38 ~~private arbitration company to any party, prospective party, or~~  
39 ~~attorney for a party or prospective party, unless the solicitation is~~



1 protected from abridgment by the Constitution of the United States  
2 or by the Constitution of the State of California.

3 (b) For the purpose of this section, solicitation includes an oral  
4 or written request for arbitration business. Nothing in this section  
5 prohibits a private arbitration company from indicating a general  
6 willingness to serve as a private arbitration company.

7 (c) A private arbitration company may not make any  
8 representation regarding consumer arbitration that promises or  
9 implies specific results or favoritism towards one party or  
10 prospective party or one type of disputant or industry.

11 (d) A private arbitration company may not adopt or enforce any  
12 rule governing consumer arbitration that is inconsistent with any  
13 statement of principle, guideline, protocol, or other nonbinding  
14 policy representation regarding consumer arbitration made or  
15 adopted by the private arbitration company. A private arbitration  
16 company may not adopt any statement of principle, guideline,  
17 protocol, or other nonbinding policy statement regarding  
18 consumer arbitration that is inconsistent with the rules under  
19 which consumer arbitration is actually conducted or administered  
20 by the private arbitration company.

21 (e) A private arbitration company may not give or receive any  
22 commission, rebate, or other remuneration for the referral of  
23 consumer arbitration cases, prospective consumer arbitration  
24 cases, consumer arbitration parties, or prospective consumer  
25 arbitration parties.

26 (f) This section applies to all consumer arbitration agreements  
27 subject to this article, and to all consumer arbitration proceedings  
28 conducted in California.

29 SEC. 4. Section 1281.93 is added to the Code of Civil  
30 Procedure, to read:

31 1281.93. (a) A private arbitration company may not  
32 administer a consumer arbitration if, on or after January 1, 2003,  
33 it has provided any paid or unpaid consulting, management, or  
34 other business service or product to any party to the consumer  
35 arbitration or to any attorney for a party in the arbitration, other  
36 than arbitration, mediation, or other methods of resolving specific,  
37 identified disputes. Nothing in this section prohibits a private  
38 arbitration company from conducting training programs regarding  
39 the arbitration or mediation process in general.



~~(b) Any arbitration award rendered in an arbitration administered by a private arbitration company in violation of this section shall be vacated at the request of the consumer party pursuant to Section 1286.2.~~

~~(c) This section applies to all consumer arbitration agreements subject to this article, and to all consumer arbitration proceedings conducted in California.~~

~~SEC. 5.~~

*SEC. 4. Section 1281.81 is added to the Code of Civil Procedure, to read:*

*1281.81. (a) Within 15 days of the receipt of a demand for arbitration pursuant to a consumer arbitration agreement, a private arbitration company shall disclose to the parties to that consumer arbitration the following matters:*

*(1) Any employment, consulting, or independent contractor relationship within the past two years, that occurs after January 1, 2003, between the private arbitration company and any party or attorney for a party to the consumer arbitration resulting in payment to the private arbitration company of thirty thousand dollars (\$30,000) or more. For purposes of this subdivision, the provision of dispute resolution or evaluation services and alternative dispute resolution related training and teaching does not constitute employment or engagement as a consultant or independent contractor.*

*(2) Any financial relationship within the past two years, that occurs after January 1, 2003, between the private arbitration company and any party or attorney for a party in a consumer arbitration, including an ownership interest, debt, loan, or lease. For purposes of this subdivision, "financial relationship" does not include the purchase of goods or services on the same terms and conditions as are available to the general public or the provision of alternative dispute resolution related services.*

*(3) Any solicitation within the past two years, that occurs after January 1, 2003, made by, or at the direction of, the private arbitration company to any party or attorney for a party to the consumer arbitration for a consumer arbitration case. For purposes of this section, solicitation includes an oral or written request for arbitration business, but does not include advertising directed to the general public or communications indicating a general willingness to serve as a private arbitration company.*

1 (b) The obligation of this section to make disclosures is a  
2 continuing duty, applying from receipt of the demand for  
3 arbitration until the conclusion of the arbitration proceeding.

4 (c) The obligations of this section to make disclosures  
5 regarding matters within the past two years shall operate only  
6 prospectively.

7 (d) This section applies to all consumer arbitration agreements  
8 subject to this article, and to all consumer arbitration proceedings  
9 conducted in California.

10 SEC. 5. Section 1281.82 is added to the Code of Civil  
11 Procedure, to read:

12 1281.82. A private arbitration company shall be disqualified  
13 for failing to comply with Section 1281.81 if a party entitled to  
14 receive the disclosure serves a notice of disqualification within 30  
15 calendar days after the company fails to comply with Section  
16 1281.81. If a private arbitration company complies with Section  
17 1281.81, a party may disqualify the private arbitration company  
18 on the basis of the disclosure statement after serving notice of  
19 disqualification within 30 calendar days after service of the  
20 disclosure statement. If a private arbitration company has  
21 complied with Section 1281.81, a party may not disqualify a  
22 private arbitration company if an arbitrator has been agreed to by  
23 the parties, unless the private arbitration company makes a  
24 material omission or a material misrepresentation in the  
25 disclosure statement.

26 SEC. 6. Section 1281.83 is added to the Code of Civil  
27 Procedure, to read:

28 1281.83. (a) A private arbitration company may not make  
29 any representation regarding consumer arbitration that promises  
30 or implies specific results or favoritism towards one party or  
31 prospective party or one type of disputant or industry.

32 (b) A private arbitration company may not adopt or enforce any  
33 rule governing consumer arbitration that is inconsistent with any  
34 statement of principle, guideline, protocol, or other nonbinding  
35 policy representation regarding consumer arbitration made or  
36 adopted by the private arbitration company. A private arbitration  
37 company may not adopt any statement of principle, guideline,  
38 protocol, or other nonbinding policy statement regarding  
39 consumer arbitration that is inconsistent with the rules under

1 *which consumer arbitration is actually conducted or administered*  
2 *by the private arbitration company.*

3 *(c) A private arbitration company may not give or receive any*  
4 *commission, rebate, or other remuneration for the referral of*  
5 *consumer arbitration cases, prospective consumer arbitration*  
6 *cases, consumer arbitration parties, or prospective consumer*  
7 *arbitration parties.*

8 *(d) This section applies to all consumer arbitration agreements*  
9 *subject to this article, and to all consumer arbitration proceedings*  
10 *conducted in California.*

11 *SEC. 7. The exclusion of self-regulatory organizations from*  
12 *the definition of private arbitration company in Section 1280 of the*  
13 *Code of Civil Procedure is not intended to affect the application*  
14 *to SROs of the arbitrator ethics standards promulgated by the*  
15 *Judicial Council pursuant to Section 1281.85 of the Code of Civil*  
16 *Procedure, because this act does not relate to those issues. This act*  
17 *may not be given retroactive effect with respect to the definitions*  
18 *set forth in Section 1280 of the Code of Civil Procedure.*

19 ~~SEC. 6.~~

20 *SEC. 8. The obligation under Section 1281.6 of the Code of*  
21 *Civil Procedure to notify consumers of their rights in the*  
22 *arbitration agreement shall become operative on January 1, 2004,*  
23 *as to health care service plans regulated by the Department of*  
24 *Managed Health Care.*

25 *SEC. 9. The provisions of this act are severable. If any*  
26 *provision of this act or its application is held invalid, that*  
27 *invalidity does not affect other provisions or applications that can*  
28 *be given effect without the invalid provision or application.*

